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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-214462

DATE: July 24, 1984

MATTER OF: C. T. Lighting, Inc.

DIGEST:

In order to have an error in bid corrected after bid opening, a bidder must submit clear and convincing evidence of the error and the intended bid price. Inherent in the bidder's obligation is the burden to establish the genuineness of evidence submitted in support of a mistake where the procuring agency asserts that the "evidence" was fabricated by the bidder. But the bidder has not carried this burden where the bidder claims only that the procuring agency's assertion--backed up by a detailed analysis--is "speculative."

C. T. Lighting, Inc. (C.T.), protests the determination by the Defense Logistics Agency (DLA) not to permit C.T. to correct an alleged mistake in its bid submitted in response to invitation for bids (IFB) No. DLA400-83-3836, issued for lighting fixtures on an f.o.b. origin or f.o.b. destination basis.

We deny the protest.

A total of three bids were received on August 17, 1984. C.T. submitted the low unit price bid of \$31 f.o.b. origin or f.o.b. destination on all 11 line items. The contracting officer suspected a mistake in C.T.'s bid because the prices were the same for f.o.b. origin and f.o.b. destination and because of the disparity between C.T.'s bid and the next low bid. By telephone conversation on August 23, 1983, and by letter dated August 25, 1983, the contracting officer requested that C.T. verify its bid prices. In a letter dated "August 12, 1983," C.T. submitted its pricing worksheets (on which a shipping charge of \$2.40 per unit is shown, along with a profit figure of \$3.22 in addition to the \$31 base price) and a letter, also dated "August 12, 1983," from a "Steve's Transporting Company" (Steve's), which quoted a shipping charge of \$2.40 per unit

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for transportation anywhere in the United States. C.T. claimed that it had made a mistake by failing to add the shipping charge and profit to its base price of \$31 and C.T. then requested award at corrected prices of \$36.62 at destination and \$34.62 at origin.

It appeared to the contracting officer that the letter from C.T. and the letter from Steve's were typed on the same typewriter and on the same day, purportedly prior to the date of bid opening and prior to the contracting officer's request for evidence to support the mistake in bid. Therefore, the contracting officer attempted to verify the shipping quotation submitted. A call was placed to Steve's, but the telephone had been disconnected. The local information operator advised that there was no listing for Steve's in the area. Since Steve's quoted a price for shipping anywhere in the United States, DLA called the Interstate Commerce Commission (ICC); the ICC also had no listing for Steve's. Based on this investigation, the contracting officer "concluded that C.T. had 'created' the August 12, 1983, letter from Steve's."

Based on this investigation, the contracting officer concluded as follows:

"The evidence submitted by C.T. and the bid submitted by C.T. indicate that some mistake was made. C.T. did not charge a separate price for first article testing and quoted the same unit price for f.o.b. origin and f.o.b. destination. C.T.'s price was significantly lower than the next bid, the price paid on prior buys, and the Government estimate.

"The evidence submitted, however, fails to prove an intended bid [because of the allegedly fabricated nature of C.T.'s submitted evidence.]"

Therefore, correction of C.T.'s bid was not allowed, but withdrawal of the bid was permitted.

C.T. maintains that its worksheets and the letter from Steve's are clear and convincing evidence of the mistake and of the intended price and that, therefore, correction should have been allowed.

5

In order to permit correction of an alleged error in bid price, the bidder must submit clear and convincing evidence showing that a mistake was made, the manner in which the mistake occurred, and the intended price. O.N.E., Inc., B-213040, Jan. 19, 1984, 84-1 C.P.D. ¶ 84; American Museum Construction Division of Byer Industries, Inc., 62 Comp. Gen. 284 (1983), 83-1 C.P.D. ¶ 337; Defense Acquisition Regulation (DAR) § 2-406.3, reprinted in 32 C.F.R. pts. 1-39 (1983). Additionally, although our Office has retained the right of review, the authority to correct mistakes alleged after bid opening, but before award is vested in the procuring agency. The weight to be given the evidence in support of an alleged mistake is a question of fact to be considered by the administratively designated evaluator of evidence, whose decision will not be disturbed by our Office unless it is without a reasonable basis. O.N.E., Inc., B-213040, supra.

What is involved in this case is DLA's assertion that C.T.'s purported evidence should not be given any weight at all because that evidence is allegedly not genuine--that is, the purported evidence was allegedly "created" after-the-fact expressly for the purpose of furthering the protest. In response to DLA's detailed analysis leading to the conclusion that C.T.'s "evidence" is not genuine, C.T. has stated only that:

" . . . [DLA] . . . raises the issue of typewriters. In this regard, the analysis of the Government is pure speculation. . . ."

A bidder, as noted above, who asserts a bid mistake bears the burden of establishing the mistake by advancing "clear and convincing" evidence of the existence of the mistake. Inherent in this burden is the obligation of the bidder to establish the genuineness of its purported evidence where the genuineness is called into question. C.T.'s "pure speculation" reply to DLA's detailed analysis asserting that C.T.'s evidence is not authentic does not, in our view, meet C.T.'s burden on this issue. Therefore, we accept DLA's position that since C.T.'s "evidence" was not genuine, correction was not permitted.

However, we agree with DLA that the bidder should have been allowed to withdraw its bid. In view of the disparity between C.T.'s bid and the next low bid and the fact that

C.T.'s bid prices were the same for both f.o.b. origin and destination, the evidence is sufficient to permit withdrawal. See Defense Acquisition Regulation § 2-406.3(e)(2) (DAL No. 76-24, August 28, 1980).

The protest is denied.

for *Milton J. Forster*
Comptroller General
of the United States